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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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COMMUNICATIONS SECTION

In the Matter of)
)
Policies and Rules Concerning)
Children's Television Programming)
)
Revision of Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

DOCKET FILE COPY ORIGINAL

To: The Commission

REPLY COMMENTS OF
CHILDREN'S TELEVISION WORKSHOP

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November 20, 1995

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TABLE OF CONTENTS

	<u>Page</u>
SUMMARY.	iii
I. THE CURRENT STATE OF CHILDREN'S EDUCATIONAL PROGRAMMING.	1
A. Although The Record Demonstrates That Children Will Watch And Learn From Educational And Informational Programming, Achievement Of The Act's Goals Demands Clear Requirements, Effectively Enforced. . .	2
B. Some Steps In The Right Direction Should Not Mask The Fact That The NAB and INTV Studies Do Not Demonstrate Industry-Wide Achievement Of The Act's Goals.	5
II. WITH FEW MODIFICATIONS, THE COMMISSION SHOULD ADOPT ITS PROPOSED "DEFINITION" OF "CORE" PROGRAMMING.	10
A. The Use Of Educational Advisors Should Establish Compliance With The Important Requirement That Education Must Be A Significant Purpose Of Qualifying "Core" Programming	11
B. The FCC Should Require Qualifying "Core" Programs To Have Written Educational Objectives, Including Target Audience Age	17
C. No Credit Should Be Given For Programming Aired Before 7 am Or After 10 pm.	19
D. The FCC Should Not Deny "Core" Programming Credit To Specials And Short-Segment Programming	20
E. The FCC Should Abandon Its Proposal To Require Icons Or Other On-Screen Educational Identifiers	21

III. THERE IS NO PROOF THAT CONGRESS INTENDED TO PRECLUDE QUANTITATIVE PROGRAMMING STANDARDS. HOWEVER, THE FCC SHOULD REJECT "PROGRAM SPONSORSHIP."	22
A. Congress Expected The FCC To Implement The Act's Goals As It Saw Fit.	24
B. The FCC Should Reject "Program Sponsorship." .	27
CONCLUSION	30

SUMMARY

The record in this proceeding establishes that television can teach children, and that quality educational programming can attract significant audiences. Several commenters noted that the 1995 Wright and Huston study demonstrates the positive educational impact of viewing such programs as "Sesame Street," while Fox observed that its children's programming combining educational objectives with market-based solutions has resulted in programming that is popular with children.

Like Fox, NBC currently produces several hours per week of children's programming developed with the assistance of educational advisors to implement written educational goals. But whether the commercial broadcast industry as a whole is meeting the Children's Television Act's goal -- a significant increase in programming specifically designed to meet children's educational needs -- remains unclear. Although NAB reports that the average station in fall 1994 aired over 4 hours of "specifically designed" programming per week, NAB relies on survey respondents' judgments of what they deemed to be educational, rather than on programming explicitly produced with educational intent as the Act requires. Moreover, as Dr. Dale Kunkel points out, NAB's decision not to identify the programs its respondents listed makes it difficult to determine the validity of its ultimate findings. INTV's survey suffers from similar deficiencies.

To foster greater realization of the Act's objectives, the FCC proposed a six-part "definition" of programming specifically designed to educate children. The "definition" avoids impermissible intrusions into content regulation, because it is actually a set of objective criteria regarding the process by which a program is created and later broadcast; the FCC will deem any program that meets the criteria to be specifically designed to educate children. Children's Television Workshop strongly favors this concept, because it not only avoids subjective content judgments by the FCC, but provides clear guidance to broadcasters, facilitates FCC review of renewal applications, and will cause producers and broadcasters to make bona fide efforts both to enhance the educational content of their children's programming, and to publicize and broadcast such programming in a manner most likely to enhance its effectiveness. With few modifications, the FCC's "definition" should be adopted.

NAB's claim that any programming that educates should meet the definition, since children learn from virtually all television, misses the point: the Act was passed to compel commercial broadcasters to do more than incidentally "educate" children. The critical component of the Act's programming renewal review provision is the requirement of programming specifically designed to educate children. The FCC's proposed definition properly seeks to strengthen this component, without discontinuing credit for general audience or other programming that contributes to meeting children's educational needs.

Although CTW does not oppose the FCC's "education as a significant purpose" test for determining if a program is "specifically designed" to meet children's needs, a more objective determinant of educational content than the "significant purpose" test is the utilization of educational advisors, as CTW previously proposed and PBS/APTS and NBC now endorse. The FCC should at least find that the use of such advisors creates a rebuttable presumption of compliance with the "specifically designed" component of the Commission's "definition."

The FCC's proposal to require qualifying "specifically designed" programming to have written educational objectives, including specifying the age range of the target audience, received broad support from public interest groups and broadcasters alike. It is not an unnecessary paperwork burden as NAB complains: the legislative history states unequivocally that licensees "must demonstrate" that they have provided programming specifically developed to meet children's educational and informational needs.

The record also demonstrates that far too much "specifically designed" programming is broadcast before 7 am, when far too few children are watching. Qualifying programming should start no earlier than 7 am.

Although regularly-scheduled standard-length programming should be the primary component of the "specifically designed" programming requirement, the FCC should not provide

disincentives to the creation of any educationally effective programming, including specials and short-form programming.

The proposal to require icons or other on-screen educational identifiers should be abandoned: they are likely to cause children to reject as "eat-your-spinach" television a program that might, without the icon, have been watched.

Even following adoption of the proposed "definition" of "specifically designed" (i.e., "core") programming, any increases in children's educational programming are unlikely to be sustained once governmental pressure is eased. The FCC should therefore adopt a safe harbor processing guideline or mandatory programming standard of three hours per week of "core" programming.

As Congressman Markey recently pointed out, commenters err who suggest that Congress considered and rejected the notion of fixed quantitative standards, and that as a result, the FCC may not adopt such standards itself. Congress never directed the FCC not to impose such standards; it simply punted a political football to the agency, telling it that the Act does not require quantitative guidelines, but carefully avoiding ruling them out. (Indeed, Congressional staff rejected broadcasters' requests to include language that would have affirmatively barred the FCC from imposing such standards.) Moreover, the legislative history clearly states that the FCC was to have discretion in determining how to enforce compliance with the Act.

A predecessor to the Act contained a required public notice provision for educational programming that never became

law. Should this mean that the similar public information initiatives the FCC has now proposed must be rejected? Such a result would be absurd. Likewise, the fact that quantitative standards were not included in the Act in order to achieve the passage of bipartisan, industry-supported legislation does not constitute a mandate that the FCC should not adopt such standards.

Finally, the FCC should abandon its "program sponsorship" proposal. The proposal will cause a "ghetto" stigma to attach to host stations, and perhaps even to "core" programming itself. Sponsorship will not support an increase in nationally-distributed educational programming, would allow stations to undermine their sponsored programming by counter-programming with popular entertainment programming, and could result in a decrease of "specifically designed" programming if either joint sponsorship of the same program, or sponsorship of existing PBS programs, is permitted.

Although CTW strongly supports public television and its leadership role in fostering quality educational children's programming, for the enumerated reasons CTW cannot support sponsorship, even as a means of funding new public television children's programming. The Act was created not to increase educational programming on noncommercial stations, but because commercial broadcasters had "failed the children of this Nation," in the words of one Senator. As a critical component of each broadcaster's public service obligation, the "core" programming requirement should not be permitted to be evaded, even in part.

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**REPLY COMMENTS OF
CHILDREN'S TELEVISION WORKSHOP**

Children's Television Workshop ("CTW") hereby responds to comments on the Notice of Proposed Rule Making in the above-captioned proceeding, 10 FCC Rcd 6308 (1995) ("Notice"), proposing changes in the Commission's implementation of the Children's Television Act of 1990 (the "Act" or the "CTA").

I. THE CURRENT STATE OF CHILDREN'S EDUCATIONAL PROGRAMMING

CTW continues to believe that without significant changes in the manner in which the Commission enforces the CTA, commercial broadcasters will minimize educational children's programming. Nevertheless, CTW applauds the leadership shown by

some of the national commercial television networks in fostering bona fide implementation of the Act. Regrettably, however, the studies proffered by NAB and INTV fail to establish that the commercial broadcast industry as a whole shares the commitment demonstrated by these networks.

A. Although The Record Demonstrates That Children Will Watch And Learn From Educational And Informational Programming, Achievement Of The Act's Goals Demands Clear Requirements, Effectively Enforced.

With its comments, CTW supplied the 1995 Wright and Huston study, the 1994 Westat study, and the 1995 Science on Saturday Morning study which, together, confirm both television's ability to teach children, and the ability of quality educational programming to attract significant audiences. Many commenters share these views: Disney, the Corporation for Public Broadcasting ("CPB"), the Center for Media Education et al. ("CME"), and the Children's Defense Fund all referenced the Wright/Huston study's demonstration of the positive educational impact of viewing such programs as "Sesame Street."^{1/}

^{1/} See Disney Comments at 4, CPB Comments at 2-3, 9 n.8, CME Comments at 20-21, and Children's Defense Fund and Black Community Crusade for Children Comments at 3-5.

Just as important, commenters echoed the view of CTW -- and of Congress when enacting the CTA^{2/} -- that children will watch well-made educational programming. For example, Fox presented compelling evidence that those Fox Children's Network programs created to be legitimate educational and informational programming, under the auspices of an Advisory Committee that includes independent experts on children, are widely popular with children.^{3/} Similarly, the Caucus for Producers, Writers and Directors cited shares of 35 to 40 for "Bill Nye, the Science Guy" and CTW's "Ghostwriter" on Canadian noncommercial television.^{4/} In short, the record demonstrates that broadcasters can "do good" for children and still "do well" for themselves.

But as CTW also pointed out, because many commercial broadcasters erroneously believe that programming specifically designed to educate and inform children will not be watched and therefore is economically non-viable, such broadcasters must minimize their presentation of educational children's programming

^{2/} S. Rep. No. 227, 101st Cong., 1st Sess. 7 (1989).

^{3/} Fox Comments at 4-6.

^{4/} Caucus for Producers, Writers and Directors Comments at 6.

if they are to serve their own economic goals. As a result, little attention is paid by these broadcasters to achieving the Act's objectives except at moments when public pressure is exerted on them by Congress and the FCC, as has particularly been the case for the past three years.

Thus, CTW fully agrees with CME that recent apparent increases in the amount of educational programming were directly precipitated by the FCC's issuance in 1993 of a Notice of Inquiry suggesting, for the first time, that the Commission might require a minimum amount of educational and informational children's programming.^{5/} The following year, the Commission's en banc inquiry served to keep broadcasters' service to children in the public eye, while the 1995 Notice, with its suggestion of a three-hour minimum amount of programming specifically designed to educate or inform children ("core" programming), has clearly provided the impetus for broadcasters to order (or produce) additions to their children's educational programming schedules.

Given their decades-long record, continuing even after passage of the CTA, of desultory compliance with the long-standing obligation to serve children's educational needs, CTW regrettably

^{5/} CME Comments at 15-17.

agrees with CME that any increases in broadcasters' airing of educational programming -- if they can be documented -- will last only as long as government pressure does.^{6/} Accordingly, the FCC should discontinue relying on voluntary broadcaster actions, and instead adopt -- and enforce -- clearer and more demanding requirements than its present children's programming rules.

B. Some Steps In The Right Direction Should Not Mask The Fact That The NAB and INTV Studies Do Not Demonstrate Industry-Wide Achievement Of The Act's Goals.

CTW commends the Fox Children's Network for broadcasting three weekly hours of educational and informational children's programming, developed with clear educational goals and the assistance of independent expert advisors and aired six days a week.^{7/} Moreover, as noted above, Fox has demonstrated that combining educational objectives with market-based solutions results in programming that children will watch.

Targeting a different segment of the child audience, NBC too has demonstrated a commitment to creating "core"

^{6/} Id. at 4-5, 9-14.

^{7/} See Fox Comments at 4-5, and attachment entitled "Series Allowed as 'Educational' in the Fox Broadcasting Affiliate Survey Results."

programming that educates as it entertains, again by utilizing educational advisors and written educational goals.^{8/}

Whether the commercial broadcast industry as a whole is meeting the Act's goal of a significant increase in the amount of programming specifically designed to educate children remains unclear, however, despite surveys of broadcasters' programming placed in the record by NAB and INTV.

NAB reports that its new study demonstrates that the average station in fall 1994 "was airing over 4 hours of regularly-scheduled specifically-designed educational and informational children's programming per week."^{9/} But this result is likely to be overstated, since the CTA means one thing by "specifically designed," and NAB means another. The Act requires FCC review, at renewal time, of the extent to which each licensee "has served the educational and informational needs of children through the licensee's overall programming, including programming specifically designed to serve such needs."^{10/} "Specifically designed" thus refers to programming created

^{8/} NBC Comments at 5-7.

^{9/} NAB Comments at 6 (emphasis in original).

^{10/} 47 U.S.C. § 303b(a)(2).

expressly for the purpose of educating children, not simply programming "specifically designed for children" as NAB would have it.^{11/} Self-evidently, whether a program was specifically designed to educate can be objectively determined only by inquiring into the circumstances of its creation.

NAB, however, asked respondents to list "programming primarily produced for children 16 years old or younger which was aired on your station and which you deem to be 'educational or informational.'"^{12/} Such reliance on respondents' judgments of what they deemed to be educational, rather than on programming explicitly produced with educational intent, is at odds with NAB's characterization of the survey results as reflecting an average of over 4 hours of "regularly-scheduled specifically-designed educational and informational children's programming per

^{11/} NAB Comments at 21-22.

^{12/} Id. at Attachment 1 ("Children's Television Programming Survey, May 1995") (emphasis added). The survey restated this directive by noting that NAB was concerned "only with programming which meets this definition, in your judgment: *Programming originally produced and broadcast for an audience of children 16 years old and younger which serves their cognitive/intellectual or social/emotional needs.*" Id. (italics in original).

week."^{13/} Even assuming the validity of NAB's approach, its decision not to identify the programs its respondents listed makes it difficult to determine the bona fides of such listings, and thus of NAB's ultimate findings.^{14/}

Like NAB, INTV declined to list all programs included in its survey results (although examples of such programming were provided).^{15/} Moreover, since 33 of 78 INTV respondents were Fox affiliates (compared with 15 and 10 UPN and WB affiliates respectively), the survey results -- 3.77 hours of "core"

^{13/} NAB Comments at 6 (emphasis added). NAB argues that reliance on broadcasters' good faith decisions as to which programs are "specifically designed" is "the proper, appropriate and only way for NAB, or the Commission, to evaluate compliance with the Act," since Congress gave broadcasters wide discretion as to what "to program and report." Id. at 8 (footnote omitted). While Congress did accord discretion to licensees to select particular programs specifically designed to educate children, as well as to determine whether and to what extent to rely on non-"specifically designed" programs, such decisions are not the same as deciding whether a particular program is specifically designed to educate children. That is a decision only the program's writers and producers can make.

^{14/} Should NAB respond to the October 25, 1995 request of the Chief of the Mass Media Bureau for additional information on NAB's survey results, we assume these questions will be addressed, and that parties will have an opportunity to comment on the new data.

^{15/} INTV Comments, Exhibit A at 9-12.

programming per week during the first quarter of 1995 --^{16/} may be skewed upward rather than being statistically representative of the universe of independent stations and Fox, UPN and WB affiliates.^{17/}

In short, as Dale Kunkel tellingly pointed out, given his findings of no apparent increase in the overall level of children's programming over the past two years, of continuing frivolous broadcaster claims that mainstream children's entertainment programming is educational, and of widespread licensee failure to comply with basic FCC reporting requirements for educational programming, a serious question is raised as to whether the Act has yet stimulated the significant improvement in broadcasters' responses to children's educational needs that Congress intended to achieve.^{18/}

^{16/} This represents a **decline** from the 4.64 hours per week broadcast in the first quarter of 1994 that was reported in an earlier INTV survey. Notice at 6316-17.

^{17/} If INTV responds to an October 25, 1995 letter from the Bureau similar to the letter directed to NAB, other parties should have an opportunity to comment on that response.

^{18/} Comments of Dr. Dale Kunkel at 1-6, and Attachment ("Broadcasters' Response To The Children's Television Act") at 8.

II. **WITH FEW MODIFICATIONS, THE COMMISSION SHOULD ADOPT ITS PROPOSED "DEFINITION" OF "CORE" PROGRAMMING.**

To clarify how broadcasters should determine what programming will be deemed specifically designed to serve the educational and informational needs of children, yet not involve itself in impermissible evaluations of the content of particular programs, the FCC proposed a six-part "definition" of such programming.^{19/} CTW supported the new definition, and continues to support it, except as follows: (i) the use of educational advisors should create a rebuttable presumption of compliance with the "specifically designed" component of the definition; (ii) acceptable hours of broadcast should be 7 am to 10 pm only; (iii) specials and short-format programming should continue to receive credit; and (iv) icons and other on-air educational identifiers should not be mandated. Strong support

^{19/} Of necessity, to avoid impermissible intrusions into content regulation, the "definition" is actually a set of objective criteria regarding the process by which a program is created and later broadcast. The FCC proposes to deem any program that meets these criteria to be specifically designed to educate and inform children. Although such a "definition" cannot guarantee that conforming programs actually do inform or educate, the process forces producers and broadcasters to make a bona fide effort both to enhance the educational and informational content of their children's programming, and to publicize and broadcast the resulting programming in a manner most likely to enhance its effectiveness.

for each of these modifications is reflected in the comments of other parties.

A. The Use Of Educational Advisors Should Establish Compliance With The Important Requirement That Education Must Be A Significant Purpose Of Qualifying "Core" Programming.

The first component of the FCC's proposed objective "definition" of "core" programming is that such programming must be "specifically designed" to meet children's educational and informational needs, "(i.e., [it] has education as a significant purpose)."^{20/} Because it also allows entertainment to be a significant component of a qualifying program, CME, Disney, and The Warner Bros. Television Network supported this proposal, which was a substitute for the FCC's earlier "primary educational purpose" suggestion.^{21/} With the caveat that the "has education as a significant purpose" test is not meant to exclude either informational programming or programming promoting

^{20/} Notice at 6327.

^{21/} See CME Comments at 26, Disney Comments at 4-8, and Warner Bros. Television Network, Warner Bros. and Time Warner Inc. Comments at 10-11.

children's social and emotional development, ABC, CBS, Westinghouse and Tribune also supported it.^{22/}

NAB, however, voiced opposition to the "significant purpose" test on the grounds that it is too narrow (suggesting only academic, instructional programming), and thus is not what the CTA intended. In NAB's view, any program that "in effect" serves children's educational and informational needs should count, whether or not there was "an 'active' significant 'purpose to educate,'" and therefore NAB urges the FCC to retain its current broad definition of educational and informational programming.^{23/} In support of this point, NAB appends an unpublished research study by Dr. Lynn O'Brien that utilized focus groups of children and educators to conclude that children learn from virtually all television programming.^{24/}

This conclusion is self-evident, but begs the question: Congress passed the Act to compel commercial broadcasters to do more than incidentally or unintentionally "educate" children. In

^{22/} See Capital Cities/ABC Comments at 18-19, CBS Comments at 8-9, Westinghouse Broadcasting Comments at 4-5, and Tribune Broadcasting Comments at 12-13.

^{23/} NAB Comments at 21.

^{24/} Id. at Att. 4.

the words of then-Senator Tim Wirth upon introducing the amendment incorporating the "specifically designed" language,

Under this new programming standard, a station must serve children's educational and informational needs and in doing so must provide programs devised with children's special learning needs and capabilities in mind. I believe this aspect of the legislation is crucial and a most important accomplishment.

. . . .

Children differ tremendously from adults in their thinking and reasoning capacities. While even very young children can make some limited sense out of most television content, the most effective way to communicate to children is to target their particular level of cognitive abilities. Just as one wouldn't try to teach a third-grader how to read by using a college-level text, it makes little sense to suggest that children's needs can be adequately served by programming primarily intended for adults, even if that programming is wholesome family viewing that includes important social lessons.

Under the standards included in this legislation, each television licensee must provide at least some programming specifically designed for children in order to qualify for license renewal. This requirement is unequivocal.

136 Cong. Rec. S10123-24 (daily ed. July 19, 1990). In short, the FCC is clearly correct in proposing to stress the importance

of programming specifically designed to educate children as the best means of fostering greater realization of the CTA's objectives, while continuing to credit general audience or other programming that contributes to meeting children's educational needs. NAB's attempt to turn back the clock should be rejected.^{25/}

Indeed, rather than acquiesce in NAB's efforts to undermine the "specifically designed" component of the CTA, the FCC should adopt creative means to strengthen implementation of that component. In its 1993 and 1994 comments and testimony in this proceeding, CTW advocated that qualifying "specifically designed" programming be developed with the assistance of educational advisors such as teachers or child development experts; be created to fulfill explicit written educational goals

^{25/} In 1988, Congress passed an earlier version of the CTA that received a pocket veto from then-President Reagan. That legislation (H.R. 3966) and later identical proposals, which only required the FCC's renewal review to consider whether the licensee "has served the educational and informational needs of children in its overall programming," were preferred by NAB over bills introduced by Senator Wirth containing "specifically designed" language. See H.R. Rep. No. 385, 101st Cong., 1st Sess. 12, 17 (1989); *Children's TV Act of 1989: Hearing on S. 707 and S. 1215 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science, and Transportation*, 101st Cong., 1st Sess. 5, 8, 9, 13, 30, 55 (1989) (including statement of Edward O. Fritts, President and CEO, NAB) ("S. 707/S. 1215 Hearing").

(a copy of which should be placed in each station's public file with its children's educational programming lists); and be tested for its educational effectiveness (with a copy of the results placed in the public file).^{26/}

In their comments on the Notice, PBS/APTS ask the FCC to adopt CTW's proposal, because "the three steps identified by CTW are crucial to the successful production of educationally effective children's programming...."^{27/} PBS explains in detail how these steps are incorporated in the process it uses to select children's series, with documented educationally efficacious results. In addition to promoting improved educational programming, PBS/APTS believe CTW's proposal would provide both broadcasters and the FCC with objective criteria for determining compliance with the CTA.^{28/}

Similarly, NBC notes that it previously endorsed CTW's proposals regarding educational advisors and explicit educational goals, and "has essentially adopted this approach" for its teen

^{26/} CTW Comments, May 7, 1993; Testimony of David V.B. Britt, CTW President/Chief Executive Officer, and Sheldon Turnipseed, Actor, "Ghostwriter," June 28, 1994; CTW Reply Comments, July 15, 1994.

^{27/} PBS/APTS Comments at 20.

^{28/} Id. at 20-22.

block of educational and informational programming. In NBC's view, the process works to enhance educational content without involving the government in evaluating the significance of that content.^{29/}

As stated in our comments, CTW does not strongly object to the FCC's proposal to deem a program specifically designed to educate if education is a "significant purpose" of the program. However, CTW continues to believe that the utilization of educational advisors is a more objective determinant of educational purpose and a more likely predictor of substantial educational content than the "significant purpose" test. Once again, CTW therefore urges the Commission to either require the use of educational advisors for qualifying "core" programming, or at least find that such use creates a rebuttable presumption of compliance with the "specifically designed" component of the Commission's definition of "core" programming.

If, however, the Commission selects the "has education as a significant purpose" test, it should clarify that informational programming is not excluded, and that (as its

^{29/} NBC Comments at 18-19. As noted above, Fox appears to use a similar process in producing "Fox Cubhouse" and "Carmen San Diego."